

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY


(Chapter II of the Patent Cooperation Treaty)

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WIPO PCT

(PCT Article 36 and Rule 70) PCT/PTO

22 JUL 2005

Applicant's or agent's file reference		FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/EP2004/000145		International filing date (day/month/year) 09.01.2004	Priority date (day/month/year) 22.01.2003	
International Patent Classification (IPC) or national classification and IPC A61K7/16				
Applicant UNILEVER N.V.				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in Item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand 08.07.2004		Date of completion of this report 01.02.2005		
Name and mailing address of the International preliminary examining authority:  European Patent Office - Glitschiner Str. 103 D-10958 Berlin Tel. +49 30 25901 - 0 Fax: +49 30 25901 - 840		Authorized Officer Boeker, R Telephone No. +49 30 25901-338		



Box No. 1 Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
 - ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
 2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages	
1-15	as originally filed
Claims, Numbers	
1-8	as originally filed

 - ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
 3. ☐ The amendments have resulted in the cancellation of:
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
 4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
- * If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/000145

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	4
	No: Claims	1-3,5-8
Inventive step (IS)	Yes: Claims	
	No: Claims	1-8
Industrial applicability (IA)	Yes: Claims	1-8
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item V.

- 1** The following documents are referred to in this communication:

D1 : US-A-5 976 506
D2 : US-B1-6 355 227
D3 : US-A-5 597 553

- 2** The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1- 3 and 5 - 8 is not new in the sense of Article 33(2) PCT.

D1 already discloses oral compositions comprising chalk (calcium carbonate) and perlite. The perlite is used for polishing teeth (see D1: example 5, agglomerate 3; column 6, lines 20 -22; column 2, line 2 - column 3, line 2).

Consequently, D1 destroys novelty of Claims 1, 3, 5 - 8.

D2 discloses oral compositions comprising calcium carbonate and perlite. The perlite is used for polishing teeth (see D2: example 1, 2; column 1, lines 19 -20; column 2, lines 29, 30; column 3, lines 10, 11).

Consequently, D2 destroys novelty of Claims 1, 2, 5 - 8.

D3 discloses oral compositions comprising calcium carbonate and perlite. The perlite is used for polishing teeth (see D3: column 3, lines 39, 40; claims).

Consequently, D3 destroys novelty of Claims 1, 2, 5 - 8.

- 3** The Applicant has not demonstrated that the use of ground natural chalk leads to any technical effect. Hence, the additional technical feature of Claim 4 cannot be a basis for an acknowledgement of inventive step.

- 4** Claims 5 - 7 attempt to define the subject-matter in terms of properties of the oral composition, i.e. a pH range, a relative dental abrasion and a percentage polish. It is however normally required to define the invention for which protection is sought in terms of technical features.

Should the properties mentioned in claims 5 - 7 be inherent properties of the compositions of independent claim 1, claims 5 - 7 are superfluous and could be deleted.

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/EP2004/000145

However, if the properties are meant to be limiting features in respect of the compositions of independent claim 1, claims 5 - 7 do not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not clearly defined, because the technical features necessary for achieving these properties are not included in claims 5 - 7.

Furthermore the properties mentioned in Claims 6 and 7, "relative dental abrasion" and a "percentage polish", are also unclear in the sense of Article 6 PCT because the method of their determination is not specified in the claims.